

SPAIN

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

SOURCE: ANONYMOUS

VICTIMS OF CORRUPTION WORKING GROUP



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Spain

SOURCE: Jose Castillejo

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1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organisations and individual citizens have legal standing in corruption-related cases.

1.2 Type of Cases

- Criminal

1.3 Legal basis under which citizens have legal standing

Art 125 of the Spanish Constitution. Arts. 110 and 280 of the Criminal Procedure Law (LEC).

But the Criminal Chamber of the Supreme Court, favoring the interests of a large financial organization, limited this capacity in its judgment of the Second Chamber of December 17, 2007. It did so on the basis of an interpretation of art. 782.1 of the LEC, which is intended for abbreviated proceedings. It alleged the impossibility of sentencing if neither the Public Prosecutor's Office nor the private prosecution requests a conviction.

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

Citizens and civil society can intervene in corruption cases in other capacities by law.

However, recently, the judiciary is systematically ruling against civil society intervention against corruption. By ordering excessive and abusive guarantees on civil organizations normally short of funds, and even - in a recent ruling against a national party for proved corruption - by ordering civil organizations to pay the costs of defense of the corrupt political party (Audiencia Nacional, Sala de lo Penal, Sentencia 21/2021 of October 28th, 2021).

We have many cases that prove how judges have put all types of obstacles to permit Civil Organizations to act against corruption. Particularly when high officials or judges are involved.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

Normally most of the State Entities that could act against corruption are led by someone named by the corrupts. Therefore it is extremely doubtful that something has been done. The Anticorruption Prosecutor's office normally dismisses most of the claims. National Ombudsman always regrets to intervene in any case related to corruption in the judiciary - which is at the peak of all corruption in Spain -, even if torture is denounced and the National Ombudsman is the Mechanism Against Torture. EU Directive 2019/1937 has not been implemented at the national level.

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

No foreign State or non-state institution of a foreign country is invested with legal standing to intervene on behalf of its citizens.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens

There are many cases in which corruption-related cases were brought to Court by civil society organizations or citizens. In most cases, with null success. Most of them were simply unaccepted by Courts, based on lies and voluntary misinterpretation of the Law.

(1) Arriaga Case: judges ruling against ECJ rulings on abusive clauses

<https://torturacorrupcion.com/el-cgpj-ha-perdido-la-verguenza-arriaga-asociados/>

(2) Fernando Presencia: judge expelled from his judicial career for presenting a case of corruption among his peers. Based on false evidences and sentenced to prison recently

<https://torturacorrupcion.com/juez-expulsado-de-la-carrera-por-denunciar-corrupcion/>

(3) Mariano Orta: lawyer sentenced to prison based on inexistent evidences. In prison now for more than 8 years. He was claiming judicial corruption.

<https://torturacorrupcion.com/encarcelado-injustamente-y-torturado/>

(4) Alberto Rodriguez: leftist congressman in Spain. Was expelled from Parliament based on a ruling of the Supreme Court, Criminal Chamber, that has no sustainable evidence.

<https://www.acodap.com/ultima-hora-caso-alberto-rodriguez-acodap-exige-la-detencion-inmediata-del-juez-marchena/>

(5) José M Castillejo: businessman discovers and claims corruption of a lady judge who acts in her Court together with her lover, a lawyer that represents clients. His career and professional life gets destroyed while the client of the judge's lover, get all his assets. Up on the basis of several rulings against evidences and EU and national Law.

<https://torturacorrupcion.com/caso-pocoyo/>

(6) Roberto Macías: employee of a national wide labor union, presents claims of corruption with evidences and gets retaliated based on false evidences, supported by Court. Now pending of a 3 year prison sentence.

<https://torturacorrupcion.com/roberto-macias-condenado-por-colaborar-con-la-justicia/>

There are dozens of cases that can be documented. In all of them, judges rule against the Law to protect corruption: financial cases, political cases, environmental cases, and human rights cases.

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (

environmental damages, human rights, corruption, among others)

The Supreme Court applies all types of limitations also to recognize the capacity and right to reparation. Both ECHR in Strasbourg and ECJ in Luxemburg have ruled against Spain for those limitations.

3.2 Procedures for advancing class-actions

Class-Actions are not legal in Spain.

EU Directive 2020/1828 of November 25th, 2020 has opened the door to class-actions but with several limitations: consumers against companies infringing EU Law, only NPO will be able to represent clients, and any extrajudicial agreement will be in force for victims.

The EU Directive will be in force on December 25th, 2022.

Therefore we expect a change in legislation (Ley de Enjuiciamiento Civil), but we don't expect positive consequences for victims.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

There is a law for victims of crime. Ley 4/2015 of April 27th, called the "Crime victim Status". Never applied.

4. 2 Cases that recognize the role of victims

Very few are recognized their role of victims, and even fewer get any protection or compensation.

4. 3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

There are no corruption-related court cases that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

There are new Agencies to protect claimants of corruption. However, they do not investigate judicial corruption. The case of the first Prosecutor Leader of the National Anticorruption Prosecutor Office is famous. He is accused of being part of a criminal organization, and there is evidence of his multimillion assets in the US, never declared in Spain.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

Information is published by enforcement authorities. Type of information:

- The enactment of sanctions

5.2 Feasible access to information on ongoing or concluded cases

There is very limited information. We imagine that in most of the cases for two reasons:

- (1) Fear of powerful official or politicians forcing the investigations to be closed
- (2) Not real willingness of ending the process with an impartial and effective investigation

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed

Mostly by person-to-person, and in very limited cases, through media. In these cases, always via alternative media. Generalists and national media keep silent about most of the corruption cases and victims.

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases

Fear and retaliation. In Spain, as shown in this questionnaire, retaliation from corruption destroys lives, families, and professional careers.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption

We need representation. We need a voice. We need to be able to lobby this situation among international organizations.

Particularly, we need that help to visualize the reality of judicial corruption and the consequences on victims' lives.

Corruption among judges is the very worst type of corruption. It is supported and maintained by fierce corporatism that avoids any type of investigation of corruption claims among judges. The last public numbers of the Council of the Judiciary showed that only 0,14% of claims against judges ended in sanctions. And most of those sanctions were never paid. Impunity is a rule for judges in Spain.